

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**GILBERT JAMES,**

**Plaintiff,**

**v.**

**Civil Action No. 3:11cv00221**

**ENCORE CAPITAL GROUP, INC., *et al.***

**Defendants.**

**DEFENDANTS' STATUS REPORT**

Defendants, Encore Capital Group, Inc., Midland Funding, LLC, and Midland Credit Management, Inc. (collectively, the “Midland Defendants”), by counsel, and pursuant to the Court’s Order of January 26, 2012 (Dkt. No. 131), hereby submit the following status report regarding the parties’ proposed Pretrial Scheduling Order.

The Court’s January 26, 2012 Order directed the parties to advise the Court on the status of the outstanding discovery and scheduling issues. The Midland Defendants have been working diligently since the hearing to gather the documents addressed by the Court’s Order, and as set forth by the Court at the hearing on January 23, 2011. The outstanding discovery issues can be segregated into two groups: the discovery requests that specifically target electronic discovery (Plaintiff Request Nos. 9-12) and all other requests. This status report addresses those groups separately.

**Electronic Discovery**

With respect to electronic discovery, as set forth in the Midland Defendants’ briefing, a search of the identified custodians’ email archives for emails dated between January 1, 2009 and the date Plaintiff commenced this action and that include the word “affidavit” anywhere in the

message yields nearly 50,000 emails, which does not include the large number of anticipated additional attachments.

The Midland Defendants have been working in concert with the electronic data management and discovery team at Troutman Sanders since the hearing date to gather the data implicated by the Court's Order. This process, however, has been delayed by significant unexpected technical issues within the Midland Defendants' email system. While they appear to have successfully identified the responsive email records, unforeseen technical issues have prevented them from successfully exporting those files for transfer to Troutman Sanders. The Midland Defendants' IT staff has been working with their email archive software vendor to resolve this issue, which they expect to resolve within a matter of days. Once that occurs, the data will be loaded onto and hosted in a review platform.

Preliminary estimates indicate that this review will likely take somewhere between three to four weeks to complete, at a cost of several hundreds of thousands of dollars. The Midland Defendants will further advise the Court once the e-discovery harvesting has been completed, a budget has been prepared as well as of any associated logistical, practical and/or scheduling issues or concerns connected with the e-discovery.

#### **All Other Discovery**

With respect to the additional documents addressed by the Court's Order, the Midland Defendants have made significant progress and expect to have a substantially full production in this regard within the next two weeks. The Midland Defendants will begin a rolling supplementation of this process this week.

Counsel for the Midland Defendants has apprised counsel for Plaintiff as to the status of the efforts of the Midland Defendants regarding the outstanding discovery and scheduling issues.

The Midland Defendants continue to believe that the process set forth in their Status Report of January 13, 2012 (Dkt. No. 128) should apply to the outstanding case management issues, whereby a date certain for expert disclosures should be set, with discovery closing for both parties in sufficient time to permit the full briefing of any motion for summary judgment at least five weeks before trial. The Midland Defendants also contend that discovery should only be reopened for both parties with respect to any documents and information revealed after the close of the parties' formal meet and confer process on November 28, 2012. The parties, however, have yet to reach agreement on any such proposal.

**ENCORE CAPITAL GROUP, INC.,  
MIDLAND FUNDING, LLC and  
MIDLAND CREDIT MANAGEMENT, INC.**

By:/s/ David N. Anthony

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 6<sup>th</sup> day of February 2012, I filed a true and correct copy of the foregoing on the Court's Electronic Case Filing System, which will send a notice of electronic filing to:

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